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BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

Arizona Corporation Commission

DOCKETED

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AT&T COMMUNICATIONS
INC. v. QWEST CORPORATION

DOCKETED BY

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IN THE MATTER OF US WEST
COMMUNICATIONS, INC.'S COMPLIANCE
WITH SECTION 271 OF THE
TELECOMMUNICATIONS ACT OF 1996.

DOCKET NO. T-00000A-97-0238

PROCEDURAL ORDER**BY THE COMMISSION:**

On March 8, 2002, AT&T Communications of the Mountain States, Inc. and TCG Phoenix (collectively, "AT&T") filed a Motion to require Qwest Corporation ("Qwest") to supplement the record ("Motion"). The genesis of AT&T's Motion was the complaint filed with the Minnesota Public Utilities Commission ("MPUC") against Qwest by the Minnesota Department of Commerce ("MDOC") that alleged that Qwest had entered into agreements with competitive telecommunications carriers which had not been filed with or approved by the MPUC as required by Section 252 of the Telecommunications Act of 1996 (the "Act"). AT&T seeks an Order from the Arizona Corporation Commission ("Commission") requiring Qwest to file as an exhibit in the 271 proceeding, copies of the same agreements, or any other agreements that are related to the provision of interconnection services or network elements in Arizona, that have not been filed with the Commission, whether or not the agreements have expired or terminated for any reason.

On March 18, 2002, Qwest filed an Opposition to AT&T's Motion. Qwest argued that AT&T did not present any reason why a newly-filed complaint against Qwest in Minnesota should delay completion of the 271 proceeding in Arizona. Qwest states it is strongly challenging the Minnesota complaint, and Qwest argues that a bare allegation in another state, where the proceedings are just beginning, is not reason to clog or delay the Arizona 271 docket. Qwest believes the MDOC is misreading the requirements of Section 252, and the Minnesota complaint raises novel and important legal issues regarding the breadth of Section 252. Qwest states it has submitted to the Arizona

1 Commission those agreements with CLECs that relate to Arizona.

2 On April 3, 2002, Commission Staff filed a Response to AT&T's Motion. Staff agrees with
3 AT&T that all interconnection agreements must be submitted to the state commission for approval
4 pursuant to Section 252(e) of the Act, and that to the extent certain agreements were misclassified so
5 as not to be subject to the requirements of Section 252(e), serious concerns are raised about Qwest's
6 compliance with the Act. Staff further believes, however, that it is premature to reopen and
7 supplement the record as AT&T request. Staff believes that rather than using the Section 271
8 proceeding to conduct any underlying review of the agreements at issue and determine whether
9 Qwest violated Section 252(e), the agreements should be reviewed in a separate proceeding or
10 through a separate process. Staff stated that it intends to open a docket and establish a schedule for
11 comments on this issue by interested parties. Under Staff's proposal, if it is ultimately found that
12 Qwest has violated provisions of the Act in not filing the agreements with the Commission, the
13 parties would be free at that time to pursue their right to raise that issue in any relevant proceeding
14 before this Commission or the FCC.

15 On April 8, 2002, AT&T filed a Reply to Staff Response. AT&T disagreed with Staff's
16 position for several reasons. First, for scheduling reasons, AT&T argues, it does not matter in which
17 docket a determination is made. AT&T asserts that what is important is that the determination of
18 whether Qwest violated the Act be made in time to raise it in the public interest phase of the 271
19 proceeding. Second, AT&T is concerned that having the documents filed in a separate docket would
20 complicate the use of the evidence, findings and conclusions of a proprietary nature in that docket in
21 the 271 proceeding. Third, AT&T argues, determining Qwest's compliance with the Act is a
22 fundamental part of the 271 proceeding.

23 We agree that Qwest's compliance with the Act, including Section 252(e), is relevant to our
24 deliberations with respect to Section 271. It is not material whether our investigation takes place in
25 the 271 docket or a separate docket. Staff opened a docket captioned: In the Matter of Qwest
26 Corporation's Compliance with Section 252(e) of the Telecommunications Act of 1996 (Docket No.
27
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1 RT-00000F-02-0271).¹ In that docket, Staff has proposed a procedural schedule that would have
2 Staff issue a report and recommendations to the Commission by May 31, 2002, prior to our tentative
3 deliberations on Staff's Final Report on Section 271.

4 Staff's proposal to consider the matter in a separate docket is reasonable and practical.
5 Documents and comments related to the specific issue of Qwest's compliance with Section 252(e)
6 will be segregated from the massive documents being filed in the 271 docket. In addition, depending
7 on the outcome of the investigation, the 252(e) docket may be active after our deliberations on
8 Section 271 are complete. The investigation would not occur on any different time schedule if it were
9 to be conducted under the aegis of the Section 271 docket. Furthermore, any findings arising out of
10 the Section 252(e) investigation docket can be cited and considered in our deliberations related to
11 Section 271.

12 IT IS THEREFORE ORDERED that AT&T's Motion is denied, and that all documents and
13 comments relating to Qwest's compliance with Section 252(e) of the Telecommunications Act of
14 1996 shall be filed in Docket No. RT-00000F-02-0271.

15 IT IS FURTHER ORDERED that any evidence, findings or conclusions arising out of Docket
16 No. RT-00000F-02-0271, may be cited when relevant to our consideration of Qwest compliance with
17 Section 271 of the Act or any other relevant proceeding.

18 IT IS FURTHER ORDERED that those parties who have entered into a protective agreement
19 in Docket No. RT-00000F-02-0271, and who have also entered to a protective agreement in the
20 Section 271 docket, may refer to portions of the protected documents, or portions thereof filed in the
21 Section 252(e) docket, in the Section 271 proceedings.

22 DATED this 18th day of April, 2002.

23
24
25 *Jane L. Rodda / by D. M. Jones*
26 JANE L. RODDA
27 ADMINISTRATIVE LAW JUDGE

28 ¹ The administrative law judge notes the irony of the assigned docket number and questions whether there is a higher force at work.

Copies of the foregoing mailed/delivered
this 18th day of April, 2002, to

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